

WEST BASIN MUNICIPAL WATER DISTRICT

PART 5. PROPERTY

Updated 2/26/18

Excerpt from West Basin Administrative Code

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PART 5. PROPERTY

CHAPTER 1. PROCUREMENT POLICY

5-1.101 POLICY

The District will procure Goods and Services in support of its administrative, operational, and capital improvement requirements. It is the intent of the District to engage in procurements that ensure it will receive Goods and Services of the appropriate quantity, of a satisfactory level of quality, delivered in a timely manner, and at a price that represents the best value to the District and its ratepayers. Furthermore, it will employ procurement processes that are fair and equitable and will allow providers of Goods and Services the greatest opportunity to participate and compete for the District's procurement engagements.

5-1.102 DEFINITION OF TERMS¹

The following definitions shall apply to this chapter:

- (a) Agreement. A contractual document issued by the District for engagements involving the provision of Services, typically delivered over an extended period of time.
- (b) Amendment / Change Order / Revision. Modification of the terms of an existing Contract.
- (c) Authority to Approve (Approval Authority). Authority to designate funding for a specific procurement.
- (d) Authority to Commit (Commitment Authority). Authority to execute a Contract for a specific designated procurement.
- (e) Bidder. Consultant, Contractor, or Supplier that submits a bid in response to a Request for Bid or an Invitation for Quote.
- (f) Consultant. An individual, firm, or entity that provides Professional Services.
- (g) Contract. A written document establishing terms and conditions between buyer and seller for the provision of Goods or Services (Professional or

Non-Professional), and includes Professional Service Agreements (PSA), General Service Agreements (GSA) and Purchase Orders (PO).

- (h) Contractor. An individual, firm, or entity that provides Non-Professional Services.
- (i) Cooperative Procurement. Any procurement conducted on behalf of two or more public agencies in order to obtain the benefit of volume purchasing and/or reduction in administrative expenses.
- (j) Critical Acquisition. Acquisition of supplies, Goods and equipment that is unplanned, unexpected, and which is essential to the continued operation of District facilities (including satellite facilities), but do not rise to the level of “Emergency” as defined in Section 5-1.105.
- (k) Critical Repairs. Repairs performed on District facilities that are unplanned, unexpected, and which are essential to the continued operation of the District facilities (including satellite facilities), but do not rise to the level of “Emergency” as defined in Section 5-1.105. Such repairs may include acquisition and installation of replacement parts.
- (l) Critical Services. Services performed on District facilities that are unplanned, unexpected, and which are essential to the continued operation of the District facilities (including satellite facilities), but do not rise to the level of “Emergency” as defined in Section 5-1.105.
- (m) District. District, when used in this policy document, means West Basin Municipal Water District.
- (n) Formal Competitive Solicitation. The issuance of a written Request for Bids, proposals, or quotations.
- (o) General Services Agreement (GSA). A written agreement for the provision of non-Professional Services by Contractors or Consultants. Typically, the GSA will be used for longer term engagements and a Purchase Order (defined below) will be used for the procurement of Services that are short term or “one time” engagements.

- (p) Goods. Refers to all types of tangible personal property including materials, supplies, and equipment.
- (q) Informal Competitive Solicitation. A written request for a bid, proposal, or quotation in accordance with written terms and conditions included in the request.
- (r) Invitation for Quote (IFQ). A written request for the submission of a price quotation to provide Goods in accordance with specifications, conditions, and other requirements included in the request.
- (s) Material Change. A change to essential terms in a contract including, but not limited to, consideration, scope of Services, insurance and indemnity obligations, and assignment.
- (t) Non-Professional Services. Services provided by a Contractor, including, but not limited to, trade, janitorial, maintenance, and construction services.
- (u) Professional Services. Any specifically trained or experienced person, firm or corporation specializing in financial, economic, accounting, engineering, information technology, legal, architectural, public relations, or other specialized disciplines. Services may include the provision of a report, study, plan, design, specification, document, program, advice, recommendation, analysis, review, opinion, inspection, investigation, audit, brokering or representation of the District before or in dealings with another party.
- (v) Professional Services Agreement (PSA). A written agreement for the provision of Professional Services by Consultants and other Professional Service providers.
- (w) Proposer. Consultant or Contractor that submits a proposal in response to a Request for Proposal.
- (x) Public Works Construction Agreement. Agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind and awarded in

compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds.

- (y) Purchase Order (PO). A commercial document issued by the District to a Supplier indicating types, quantities, delivery requirements, and agreed prices for the Goods the Supplier will provide the District. A PO may also be issued to a Contractor or Consultant for the procurement of Services that are short term or “one time” engagements.
- (z) Request for Bid (RFB). Primarily used for construction, a written request for the submission of a sealed price bid to perform work in accordance with specifications, conditions, and other requirements included in the request.
- (aa) Request for Proposal (RFP). A written request for the submission of a proposal in accordance with specifications, conditions, and other requirements included in the request.
- (bb) Requisition. A document generated by staff to identify and establish a requirement for, and request authorization of, the procurement of Goods or Services. Approved Requisitions are converted to the appropriate Contract document (PSA, GSA, or PO) for the procurement of the good or service.
- (cc) Responsible Bidder. A Contractor that meets the District’s standards with respect to a reasonable expectation that the Contractor has the management, technical, financial, equipment, and human resources available to ensure adequate performance of the work described in a solicitation.
- (dd) Responsive Bidder. A Contractor that provides a solicitation response that satisfactorily addresses all the requirements specified in a solicitation.
- (ee) Service(s). The labor, intellectual property or other work product provided by a Contractor or Consultant that is not tangible personal property.

- (ff) Single Source Procurement. Procurement of a Good or Service where multiple sources of supply exist but competition is circumvented and one source is held in preference over the others.
- (gg) Sole Source Procurement. Procurement of a Good or Service where only one viable provider of such Good or Service exists. Typical examples include original equipment and manufacturer's replacement parts, patent and copyright restrictions, proprietary processes, and warranty compliance issues.
- (hh) Supplier. A provider of Goods.
- (ii) Vendor. A term commonly used to refer to any providers of Goods or Services including Contractors, Consultants, and Suppliers.

5-1.103 PROCUREMENT SOLICITATION PROCESS²

- (a) Informal Competitive Solicitations for Goods, Professional Services, and Non-Professional Services. For Informal Solicitations, a minimum of three (3) written price quotations or proposals shall be competitively solicited. If less than three price quotations or proposals are obtained, it must be demonstrated that competition was attempted and the circumstances of the solicitation shall be documented and included with the price quotations or proposals received.
- (b) Formal Competitive Solicitations for Goods. When applicable, Formal Solicitations for Goods shall be posted on the District's internet based bid management system, and advertised as otherwise required by law. Whenever possible and practical, a minimum of 14 calendar days shall be provided for responses.
 - (1) The Formal Solicitation process requires a written Invitation for Quote (IFQ) covering the following (as applicable):
 - (i) Instructions to Bidders.
 - (ii) Detailed scope of supply including Goods specifications, quantity requirements, and delivery requirements.

- (iii) The District's Purchase Order Terms and Conditions.
 - (2) Recommendation for Purchase Order award will be based on the lowest bid submitted by a responsible and Responsive Bidder.
 - (3) Board Review. Bidders responding to a Formal Solicitation from the District shall have the right to address the District's Board of Directors before the Board authorizes any Purchase Order for the proposed Goods. The staff will provide written notice to all such Bidders of the recommendation that staff will present to the Board. The notice will provide a seven (7) day calendar day period to allow any such Bidder the opportunity to address the Board at the next meeting at which the Board plans to authorize the Purchase Order.
- (c) Formal Competitive Solicitations for Professional and Non-Professional Services. Formal Competitive Solicitations shall be posted on the District's internet based bid management system and as otherwise required by law. Whenever possible and practical, a minimum of fourteen (14) calendar days shall be provided for responses.
 - (1) The Formal Solicitation process requires a written Request for Proposal (RFP) covering the following (as applicable):
 - (i) Instructions to Proposers
 - (ii) Scope of Work
 - (iii) A list of basic questions regarding each firm (address, number of personnel, qualifications, experience, etc.).
 - (iv) A description of the method of selection used by the District.
 - (v) An explanation of the District's insurance requirements.
 - (vi) A sample Agreement which the Proposer will be required to execute, if selected.
 - (2) All proposals submitted in response to a Formal Solicitation will be reviewed by District staff.
 - (i) Interviews will be conducted by a District staff panel with the most qualified Proposers and their proposed project team to

assure a mutual understanding of the project and to obtain additional details related to their capabilities. Interviews for engagements in excess of \$500,000 will be conducted by a panel consisting of District staff and a third party with relevant expertise. The Board may excuse this interview requirement prior to the receipt of any proposals.

- (ii) Based upon the evaluation of proposals and interviews (as applicable) each panelist will assign a score to the Proposer. The District shall compile the panelists' scores and rank the Proposers by score, taking into account all of the information obtained.
- (3) The following criteria, as applicable, shall be considered in the RFP evaluation of qualified Proposers to provide Services:
- (i) Project approach and schedule.
 - (ii) Specialized experience and technical competence of the Proposer and their project team relative to the type of Services required and the complexity of the project.
 - (iii) Suitability of the Services proposed to meet the District's needs.
 - (iv) Specific experience and qualifications of identified team members and their familiarity with the types of problems applicable to the project.
 - (v) Time commitment of key staff.
 - (vi) Past record of performance on Agreements with the District, other public agencies, and private industry, include control of costs, quality of work, and ability to meet schedules.
 - (vii) Fee proposal for the proposed Services.
 - (viii) Other key factors as appropriate for the type of service.
- (4) Recommendation of a Proposer for Agreement award will be based on the composite score assigned by the evaluation panel. This

recommendation represents the evaluation panel's assessment of the Proposer's ability to provide the best value to the District.

- (5) Board Review. Proposers responding to a Formal Solicitation from the District shall have the right to address the District's Board of Directors before the Board authorizes any Agreement for the proposed Services. The staff will provide written notice to all such Proposers of the recommendation that staff will present to the Board. The notice will provide a seven (7) calendar day period to allow any such Proposer the opportunity to address the Board at the next meeting at which the Board plans to authorize the Contract.
- (6) In the event that a Formal Competitive Solicitation will be awarded on a price basis only, the award shall be made to the lowest responsible, responsive proposer.
- (d) Formal Competitive Solicitations for Public Works Construction. The procurement of public works by the District shall be governed by the provisions of the California Public Contracts Code. Formal Solicitations will be posted on the District's internet based bid management system, and advertised as otherwise required by law. Whenever possible and practical, a minimum of fourteen (14) calendar days shall be provided for responses.
 - (1) The Formal Solicitation process requires a written Request for Bid (RFB) covering the following (as applicable):
 - (i) Instructions to Bidders.
 - (ii) Detailed scope of work including plans and specifications.
 - (iii) An explanation of the District's insurance requirements.
 - (iv) A sample Agreement which the Bidder will be required to execute if selected.
 - (2) Recommendation for Contract award will be based on the lowest bid submitted by a Responsible and Responsive Bidder.

- (3) Board Review. Bidders responding to a Formal Solicitation from the District shall have the right to address the District's Board of Directors before the Board authorizes any Agreement for the proposed Services. The staff will provide written notice to all such Bidders of the recommendation that staff will present to the Board. The notice will provide a seven (7) calendar day period to allow any such Bidder the opportunity to address the Board at the next meeting at which the Board plans to authorize the Contract.
- (e) Prequalification of Bidders.³
- (1) The General Manager may designate public works projects or parts thereof that require specialized skills or cost in excess of five million dollars (\$5,000,000) to be subject to prequalification of bidders.
 - (2) To become a prequalified bidder, a contractor must submit to the District a prequalification application consisting of a standardized questionnaire, financial statement, and statement of experience. The forms for the questionnaire, financial statement, and statement of experience will be provided as part of the pre-qualification bidding packet.
 - (3) The questionnaires and financial statements submitted by prospective contractors are not public records and are not subject to public inspection. Records of the names of contractors applying for prequalification status are public records and subject to disclosure. Documents submitted by a prospective contractor will be submitted under penalty of perjury.
 - (4) The District will rate prospective contractors in accordance with the rating system based on (1) the requirement of California Public Contract Code § 20101; and (2) the model guidelines and standardized questionnaire created by the State of California Department of Industrial Regulations, as modified at the District's discretion to address the needs of the particular project, or projects,

to which they are to be applied. The District will devise the questions, process, and scoring for the rating system, so as to best evaluate a contractor's ability to successfully complete a particular project. This information will be provided as part of the prequalification bidding packet. The Rating System will be applied uniformly and objectively to all prospective contractors, which have submitted properly completed documents in accordance with this Policy.

The District may determine that only a certain number of the top scoring pass-rated contractors shall be considered prequalified for a specific project. This determination shall be made prior to issuing the Notice Inviting Prequalifications for the specific project.

- (5) When the District uses this prequalification process, the only contractors eligible to submit a bid are prequalified contractors. Further, such contractors shall submit bids only naming a prequalified subcontractor when subcontractors are prequalified. Any bid received listing an unqualified subcontractor will automatically be disqualified as nonresponsive. No bid shall be accepted for the project from unqualified contractors.
- (6) A contractor's prequalification status will immediately terminate if:
 - (i) the contractor fails to give the District written notice of changes in the information previously provided within ten (10) days before a bid opening;
 - (ii) the contractor's license is suspended or terminated by the California State Licensing Board;
 - (iii) the contractor is convicted of any crime of moral turpitude;
 - (iv) the contractor's application contains materially false information; or

- (v) the contractor's control over a public works contract, whether within the District's jurisdiction or otherwise, is terminated for cause.
- (7) The District shall give written notice to each contractor of the prequalification determination for that contractor. A contractor may appeal a rating of "not qualified," including a decision to revoke a previous qualified rating. There is no appeal from a finding that a contractor is not prequalified because of a failure to submit required information or failure to submit required information in a timely manner.
- (i) A contractor may appeal the decision as follows:
 - a. By giving written notice of appeal to the General Manager no later than ten days after receipt of the not qualified rating.
 - b. The notice of appeal shall contain at least the following:
 - i. The name, address and telephone number of the person making the appeal;
 - ii. A description of the determination which is the subject of the appeal, and the date of the Notice of Determination; or
 - iii. A brief description of the grounds for the appeal.
 - (ii) The District will provide the contractor with a written statement of the basis for the not qualified determination and supporting evidence received from others or adduced as a result of investigation.
 - (iii) Within 14 days of sending the response to the contractor, the General Manager shall hear the appeal. The hearing shall be an informal one. The Contractor may rebut evidence which is

the basis for the determination and present evidence why the contractor is qualified.

- (iv) The General Manager or designee may affirm the earlier determination or reverse the determination and assign a different rating. This decision will be in writing containing a summary of the facts that led to the decision. The decision of the General Manager is final. A contractor shall have no right to appeal that decision to the Board.
- (8) The General Manager may cancel the prequalification process at any time during the prequalification process, even after receiving and scoring applications. If the prequalification process is cancelled, the normal competitive bidding rules will apply. The District assumes no liability for the cost a prospective contractor may have incurred by submitting an application for prequalification, and the submittal of a prequalification application is a waiver to claim any such cost or losses due to cancellation of the process.
- (f) Exceptions to Competitive Solicitation Requirements.⁴
 - (1) Exemptions. The following procurements are exempt from the competitive solicitation process: books, periodicals, advertising, seminars, conferences, travel, subscriptions, postage, utilities, bank charges, memberships, travel reimbursements, employment agencies, legal services, and permits.
 - (2) Sole Source Procurements. The competitive solicitation process is waived for procurements where the required Good or Service is available from only one viable source (Good or Service provider). Negotiations shall be conducted with the provider of the Good or Service to achieve the most favorable pricing terms of sale.

5-1.104 PROCUREMENT AUTHORITY OF GOODS AND SERVICES⁵**(a) Procurement Authority**

- (1) Procurement Authority shall be exercised and performed by the Board of Directors. This authority includes both the authority to approve procurements and the authority to commit the District to procurements. The Board of Directors may delegate certain authorities to the District's management and staff. These delegated authorities shall be exercised and performed in accordance with applicable federal, state, and local laws and the policies contained herein.
- (2) Approval Authority shall be managed through Requisition approval process. The Requisition approval process, as delegated by the Board of Directors, shall be governed by the guidelines set forth in the following sections 5-1.104, (b)-(e).
- (3) Commitment Authority, as delegated by the Board of Directors, shall be exercised and performed by the General Manager. Commitment Authority may be delegated to appropriate staff (designated alternate / delegate) at the discretion of the General Manager.

(b) Procurement of Goods. The District may procure Goods as authorized below:

- (1) Any Procurement of Goods over \$1,000:
 - (i) Requires a Purchase Order
- (2) Requisitions with a total cost up to \$10,000:
 - (i) Requires at least one price quotation
 - (ii) Requires a Requisition approved by the responsible Department Manager
 - (iii) Requires a Purchase Order executed by the General Manager or designated alternate (delegate)
- (3) Requisitions with a total cost over \$10,000 and up to \$50,000:

- (i) Requires Informal Solicitation process with at least three competitive price quotations
 - (ii) Requires a Requisition approved by the responsible Department Manager and the General Manager (or the General Manager's delegate)
 - (iii) Requires a Purchase Order executed by the General Manager or designated alternate (delegate)
- (4) Requisitions with a total cost of \$50,000 or more:
 - (i) Requires Formal Solicitation process and Board approval
 - (ii) Requires a Requisition approved by the responsible Department Manager and the General Manager (or the General Manager's delegate)
 - (iii) Requires a Purchase Order executed by the General Manager or designated alternate (delegate)
- (5) Amendments / Change Orders / Revisions: Material Changes to a Contract document require authorization. Approval and execution is subject to the thresholds established above and based on the final value of the Contract document after the change is incorporated.
- (c) Leasing of Goods. Leasing of Goods is subject to the same requirements established for the procurement of Goods, as defined in Section B above.
- (d) Procurement of Professional Services. The District may procure Professional Services as authorized below:
 - (1) Professional Services of any value:
 - (i) Requires a Professional Services Agreement.
 - (ii) Oral/Non-written engagements are strictly prohibited.
 - (2) Professional Services up to \$10,000:
 - (i) Requires a single proposal and price quotation
 - (ii) Requires a Requisition approved by the responsible Department Manager

- (iii) Requires a Professional Services Agreement executed by the General Manager or designated alternate (delegate) and District Counsel
- (3) Professional Services over \$10,000 and up to \$50,000:
 - (i) Requires an Informal Solicitation with at least three competitive proposals/quotations
 - (ii) Requires a Requisition approved by the responsible Department Manager and the General Manager (or the General Manager's delegate)
 - (iii) Requires a Professional Services Agreement executed by the General Manager or designated alternate (delegate) and District Counsel
- (4) Professional Services for \$50,000 or more:
 - (i) Requires Formal Solicitation and Board approval
 - (ii) Requires a Requisition approved by the responsible Department Manager and the General Manager (or the General Manager's delegate)
 - (iii) Requires a Professional Services Agreement executed by the General Manager or designated alternate (delegate) and District Counsel
- (5) Amendments / Change Orders / Revisions: Material Changes to a Contract document require authorization. Approval and execution is subject to the thresholds established above and based on the final value of the Contract document after the change is incorporated.
- (e) Procurement of Non-Professional Services. The District may procure non-Professional Services as authorized below:
 - (1) Non-Professional Services of any value:
 - (i) Requires a Contract document (PO or GSA)
 - (ii) Oral/Non-written engagements are strictly prohibited

- (2) Non-Professional Services up to \$10,000:
 - (i) Requires a single proposal and price quotation
 - (ii) Requires a Requisition approved by the responsible Department Manager
 - (iii) Requires a General Services Agreement executed by the General Manager or designated alternate (delegate) and District Counsel or a Purchase Order executed by the General Manager or designated alternate (delegate)
- (3) Non-Professional Services over \$10,000 and up to \$50,000:
 - (i) Requires an Informal Solicitation with at least three competitive proposals/quotations
 - (ii) Requires a Requisition approved by the responsible Department Manager, and the General Manager (or the General Manager's delegate)
 - (iii) Requires a General Services Agreement executed by the General Manager or designated alternate (delegate) and District Counsel or a Purchase Order executed by the General Manager or designated alternate (delegate)
- (4) Non-Professional Services for \$50,000 or more:
 - (i) Requires Formal Solicitation process and Board approval
 - (ii) Requires a Requisition approved by the responsible Department Manager and the General Manager (or the General Manager's delegate)
 - (iii) Requires a General Services Agreement executed by the General Manager or designated alternate (delegate) and District Counsel or a Purchase Order executed by the General Manager or designated alternate (delegate)
- (5) Amendments / Change Orders / Revisions: Material Changes to a Contract document require authorization. Approval and execution is subject to the thresholds established above and based on the

final value of the Contract document after the change is incorporated.

- (f) Public Works. The procurement of Goods and Services for the construction of public works by the District shall be governed by the provisions of the California Public Contract Code. Engagements of \$35,000 or greater for works of public improvement are subject to the Public Contract Code and are subject to the following thresholds:
- (1) Public Works of \$35,000 or more:
 - (i) Requires Formal Solicitation process and Board approval
 - (ii) Requires a Requisition approved by the Responsible Department Manager and the General Manager (or the General Manager's delegate)
 - (iii) Requires a Public Works Construction Agreement executed by the General Manager or designated alternate (delegate) and District Counsel
 - (2) Amendments / Change Orders / Revisions: Material Changes to a Contract document require authorization. Approval and execution is subject to the thresholds established above and based on the final value of the Contract document after the change is incorporated. Change Orders within preapproved funding amounts require execution by cognizant District staff, the Department Manager and the General Manger or designated alternate (delegate)
- (g) Cooperative Procurement. Opportunities to participate in Cooperative Procurement shall be pursued whenever feasible and in the best interest of the District.
- (h) Requirement Splitting. Splitting or separating quantities of Goods or portions of Services to avoid more stringent competitive solicitation requirements or more stringent Approval of Commitment Authority levels is strictly prohibited.

5-1.105 EMERGENCY PURCHASES AND SERVICES⁶

In the event of an emergency, the General Manager may make immediate purchases of Goods and Services pursuant to California Government Code requirements. Emergency purchases include any purchase required to prevent imminent danger or to prevent or mitigate the loss or impairment of life, health, property, or essential public Services. Every effort shall be made to obtain advance approvals or to obtain approvals as soon as possible following the purchase.

5-1.106 PROCUREMENT OF CRITICAL GOODS AND SERVICES

When expenditures are made for the procurement of Critical Goods and Services, staff will use its best efforts to conform to the Informal Solicitation process set forth in section 5-1.103(A); and shall not exceed \$250,000 per each critical repair or critical acquisition.

Any expenditure for these types of repairs will be brought to the Board of Directors at the next regularly scheduled Board meeting for ratification.

5-1.107 SINGLE SOURCE PROCUREMENT OVER THRESHOLD⁷

Single Source procurements in excess of \$10,000, as defined in Section 5-1.104 above, should be utilized only in circumstances where competitive solicitation is not in the best interest of the District. Significantly compelling reasons should form the justification for procurements of this type. Single Source procurements require the approval of the Board of Directors.

5-1.108 CONTRACT TIME EXTENSIONS⁸

The General Manager may extend the term of a District agreement so long as the Contract has not expired and there are no other Material Changes to the agreement, such as scope of work, consideration, method of payment, insurance, and indemnity requirements. This provision applies to time extensions only.

5-1.109 POLICY COMPLIANCE⁹

All procurements of Goods and Services pursued on behalf of the District shall be conducted in accordance with this Procurement Policy. District staff shall comply with this Policy to ensure the responsible and prudent expenditure of public funds and the preservation of the public trust. Violations of this Policy will result in disciplinary action up to and including dismissal.

5-1.110 EXCEPTIONS TO THIS POLICY¹⁰

The Board of Directors authorizes the General Manager to effect procurements, or other activities of special circumstance, free of this Procurement Policy when the General Manager has determined that such action would be in the best interest of the District, and when such action is not in conflict with applicable local, state, or federal laws. The General Manager shall not delegate this authority. The General Manager will report any exceptions taken to the Board of Directors.

LIST OF CHANGES TO PART 5, CHAPTER 1. PROCUREMENT POLICY

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- ¹ Section 5-1.102 amended by Resolution 8-16-1046 on August 22, 2016.
 - ² Section 5-1.103 amended by Resolution 8-16-1046 on August 22, 2016.
 - ³ Section 5-1.103(e) amended by Resolution 2-17-1060 on February 27, 2017.
 - ⁴ Section 5-1.103(f) added by Resolution 2-17-1060 on February 27, 2017.
 - ⁵ Section 5-1.104 amended by Resolution 8-16-1046 on August 22, 2016.
 - ⁶ Section 5-1.105 amended by Resolution 8-16-1046 on August 22, 2016.
 - ⁷ Section 5-1.107 added by Resolution 8-16-1046 on August 22, 2016.
 - ⁸ Section 5-1.108 amended by Resolution 8-16-1046 on August 22, 2016.
 - ⁹ Section 5-1.109 amended by Resolution 8-16-1046 on August 22, 2016.
 - ¹⁰ Section 5-1.110 amended by Resolution 8-16-1046 on August 22, 2016.

CHAPTER 2. SMALL AND LOCAL BUSINESS ENTERPRISE PROGRAM

5-2.101 POLICY¹

The District encourages the utilization of either small or local businesses as defined by section 5-2.102. To promote the participation of Small or Local Business Enterprises in the competitive solicitation process, the District has established a program that provides incentives to encourage small or local firms/businesses to participate in District solicitations.

The goal of the program is to reduce barriers and to take advantage of the economic benefits and enhanced community participation their utilization provides. In addition, the District encourages all prime contractors/consultants (the "Prime(s)") to utilize small or local business subsuppliers, subcontractors or subconsultants (the "Sub(s)"), whether at a first tier or a lower tier Sub level. Lower tier Subs, must provide services and/or materials directly related to the project or they will not qualify to meet the goal.

5-2.102 DEFINITION OF TERMS²

The following definitions shall apply to this chapter:

- (a) Local Business Enterprise (LBE): To be considered as a local business enterprise, a firm must provide evidence, in the form of a business license, that the firm is located at a fixed commercial or residential address where administrative, clerical, professional or other productive work is performed relative to its commercial purpose. The firm must be located either within the District's service area or within 25 miles of the District's Carson headquarters for a minimum of one year.
- (b) Small Business Enterprise (SBE): To be considered as a small business enterprise and to encourage maximum participation, the District will accept a firm that meets the federal U.S. Small Business Administration (SBA) size standards or the SBE standards set by the California Department of General Services (DGS). In addition, the District will accept a firm's self-

certification of any local agency within the State of California. All certifications are subject to verification.

5-2.103 VENDOR REGISTRATION AND CERTIFICATION³

To be considered as a SBE or LBE, interested firms must register with the District's online solicitation system. To qualify as a SBE or LBE, the firm must be certified by the due date of the Commitment Plan or its direct submission of its proposal/bid to the District. Prior to the contract award, the SBE or LBE shall be verified and may be audited by the District.

5-2.104 GOODS⁴

For the purposes of evaluation of competitive quotations, the quotations of small or local business enterprises will be reduced by 3%. If the participant is both a small and a local business, the quotation will be reduced by up to 5%. If, after this adjustment, the SBE or LBE is determined to be the most competitive quotation, the actual Contract amount will be the amount originally quoted.

5-2.105 PROFESSIONAL SERVICES⁵

All proposals for Professional Services over \$50,000 value will be evaluated on a 100-point scale. A value of three (3) additional points will be added to the evaluation scores of SBE or LBE participants who propose as prime Consultants on Professional Services Contracts. If the participant is both a small and a local business, the firm will be awarded up to five (5) points.

If a non-local prime Consultant includes a SBE or LBE as a Sub-Consultant in its proposal, a value of up to three points may be added to the evaluation score of the non-local prime Consultant. Points will be awarded based on the relationship the percentage dollar amount of the Contract that will be performed by the SBE or LBE bears to the three preference points. The District will award a minimum of one point for either SBE or LBE participation only if at least twenty-five percent (25%) of the total compensation paid by the District under the terms of the contract are allocated to and received by the small or local business enterprise.

In the event the proposed Services will be evaluated on a price basis only, the price proposals of SBE or LBE will be reduced by up to 3% (up to 5% if both SBE & LBE) based on the percentage SBE or LBE participation consistent with the policy described in the paragraph above. If, after this adjustment, the SBE or LBE is determined to be the most competitive price proposal, the actual Contract amount will be the amount originally proposed.

5-2.106 NON-PROFESSIONAL SERVICES⁶

All proposals for Non-Professional Services over \$50,000 value will be evaluated on a 100-point scale. A value of three (3) additional points will be added to the evaluation scores of SBE or LBE who propose as prime Contractors on Non-Professional Services Contracts. If the participant is both a small and local business, the firm will be awarded up to five (5) points.

If a non-local prime Contractor includes a Local Business Enterprise SBE or LBE as a subcontractor in its proposal, a value of up to three points may be added to evaluation score of the non-local prime Contractor. Points will be awarded based on the relationship the percentage dollar amount of the Contract that will be performed by the SBE or LBE bears to the three preference points. The District will award a minimum of one point for either SBE or LBE participation only if at least twenty-five percent (25%) of the total compensation paid by the District under the terms of the contract are allocated to and received by the small or local business enterprise.

In the event the proposed Services will be evaluated on a price basis only, the price proposals of SBE or LBE will be reduced by up to 3% (up to 5% if both SBE & LBE) based on the percentage SBE or LBE participation consistent with the policy described in the paragraph above. If, after this adjustment, the SBE or LBE is determined to be the most competitive price proposal, the actual Contract amount will be the amount originally proposed.

5-2.107 PUBLIC WORKS CONSTRUCTION⁷

If a prime Contractor intends to employ subcontractors, and the amount of the Contract is less than \$3 million dollars, as determined by West Basin's engineer's

estimate, the prime Contractor will be required to a) attend the pre-bid meetings; and b) advertise for subcontractor bids from SBEs or LBEs in one or more daily or weekly newspapers, trade association publications, trade journals, or other relevant media or demonstrate a communication log of its direct contact with small and local businesses.

If a prime Contractor intends to employ subcontractors, and the amount of the Contract is \$3 million dollars or more, as determined by West Basin's engineer's estimate, the prime Contractor must, in addition to the requirements set forth above: a) provide written notice of its interest in receiving subcontractor proposals to those SBEs or LBEs having an interest in participating in the work. These notices of interest must be provided not less than 10 calendar days prior to the date the proposals are required to be submitted to the District; and b) the prime Contractor must follow-up the initial solicitations by contacting the interested SBEs or LBEs to determine whether the LBEs were interested in performing specific portions of the project. Such follow up contact must be made not less than 3 calendar days prior to the date the proposal are required to be submitted.

5-2.108 SHELTERED BIDDING⁸

Sheltered bidding is designed to improve opportunities and build capacity for the SBE and LBE firms to compete for work with other like firms.

The District may utilize sheltered bidding for competitive solicitations up to \$50,000 where a minimum of three bids is sought by the District. The District Project Manager will make a good faith effort to request solicitations only from eligible SBE or LBE firms.

5-2.109 SBE AND LBE PARTICIPATION REQUIREMENTS⁹

To encourage participation as either a SBE or LBE, the District sets a 10% annual target for the participation goal. The eligible expenditures will not include potable water charges (purchased for resale), debt service, permits and regulated utilities (electric, gas, water or phone).

5-2.110 UTILIZATION OF SMALL BUSINESS ENTERPRISE AND LOCAL BUSINESS ENTERPRISE¹⁰

During the term of the contract, the prime Contractor/Consultant is required to utilize all subcontractors/subconsultants listed on the commitment plan. Any substitution of any subcontractor/subconsultant requires approval from District management. If there is a substitution, the prime contractor/consultant shall provide proof, to the satisfaction of the District management that a reasonable effort was made to replace with another SBE or LBE firm.

5-2.111 CONTRACT AMENDMENTS¹¹

If the District approves a change order or contract amendment, the SBE or LBE participation goals may, at the discretion of management, apply to the change order or contract amendment. If the additional work includes scope that was initially assigned to the SBE or LBE, then the SBE or LBE should receive a proportional amount of the added work.

5-2.112 CONTRACT COMPLIANCE¹²

The prime contractor/consultant shall report the dollar value of payments to small or local businesses on a monthly basis and at project close-out and will be subject to verification. This information shall be supplied on a District form.

If the SBE or LBE firm listed on a prime Contractor/Consultant loses its status prior to contract award, the firm will not receive SBE or LBE status for the District unless the firm becomes eligible or the prime contractor/consultant shall replace the affected SBE or LBE dollar amount/percentage and submit to the District for approval in order to proceed with the contract award.

If the SBE or LBE firm listed on a prime Contractor/Consultant bid or proposal loses its status during the term of the contract, work performed on that contract after the firm loses its certification will continue to be credited toward meeting the participation goal. However, the firm may not be able to receive SBE or LBE status on future projects unless the firm is subsequently re-certified as an SBE or LBE.

Substitution of any SBE or LBE subcontractor/subconsultant listed on a prime Contractor/Consultant Commitment Plan must be approved by the District's management. Nothing herein shall be construed to supersede or limit the requirements for contractor substitutions provided in Section 4100 et seq. of the California Public Contract Code.

The District may conduct site visits and interviews with the subcontractor/subconsultant/subsupplier to verify proper and full utilization of SBEs and LBEs to meet contract requirements. Prime contractors/consultants and the SBE/LBE shall fully cooperate with such monitoring.

Failure to comply with the SBE/LBE requirements may be considered a breach of contract.

5-2.113 PERIODIC REVIEW¹³

The District will seek periodic comments from contractors and consultants from prime, small and local businesses on the effectiveness of the program. District staff shall report to the Board on the effectiveness of the program and include information on contracts issued in the preceding fiscal year, and the payments to all SBE or LBE contractors, consultants, and suppliers.

The District may, at its discretion, perform random audits of the program participants to ensure that the appropriate utilization of small and local businesses. The audit may include, but not be limited to, the verification of small and local business certification status, interviews, and review of utilization forms.

**LIST OF CHANGES TO PART 5, CHAPTER 2. SMALL AND LOCAL BUSINESS
ENTERPRISE PROGRAM**

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- ¹ Section 5-2.101 amended by Resolution 02-18-102 on February 26, 2018.
- ² Section 5-2.102 amended by Resolution 02-18-1082 on February 26, 2018.
- ³ Section 5-2.103 "Vendor Registration and Certification" added by Resolution 02-18-1082 on February 26, 2018.
- ⁴ Section 5-2.104 amended by Resolution 02-18-1082 on February 26, 2018.
- ⁵ Section 5-2.105 amended by Resolution 02-18-1082 on February 26, 2018.
- ⁶ Section 5-2.106 amended by Resolution 02-18-1082 on February 26, 2018.
- ⁷ Section 5-2.107 amended by Resolution 02-18-1082 on February 26, 2018.
- ⁸ Section 5-2.108 "Sheltered Bidding" added by Resolution 02-18-1082 on February 26, 2018.
- ⁹ Section 5-2.109 "SBE and LBE Participation Requirements" added by Resolution 02-18-1082 on February 26, 2018.
- ¹⁰ Section 5-2.110 "Utilization of Small Business Enterprise and Local Business Enterprise" added by Resolution 02-18-1082 on February 26, 2018.
- ¹¹ Section 5-2.111 "Contract Amendments" added by Resolution 02-18-1082 on February 26, 2018.
- ¹² Section 5-2.112 "Contract Compliance" added by Resolution 02-18-1082 on February 26, 2018.
- ¹³ Section 5-2.113 "Periodic Review" added by Resolution 02-18-1082 on February 26, 2018.

CHAPTER 3. ECONOMIC OUTREACH

5-3.101 POLICY

In 1996, a majority of California voters passed Proposition 209, which amended the California Constitution (at Article 1, Section 31) to prohibit public agencies from granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity or national origin to public contracting. This prohibition does not apply to action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds. When action must be taken to establish or maintain such eligibility, the District will follow the guidelines set forth below:

5-3.102 DEFINITION OF TERMS

The following definitions shall apply to this chapter:

- (a) Economic Outreach Plan. A set of specific and result-oriented procedures designed to achieve equal employment opportunity.
- (b) Disadvantaged Business Enterprise (DBE). A small business concern with at least 51 percent owned by women or members of a minority group or disabled persons and who management and daily business operations are controlled by one or more of the women or members of a minority group who own it.
- (c) Disabled Person. A qualified individual with a disability as defined by the Americans with Disabilities Act of 1990.
- (d) Feasible. Capable of being accomplished economically within a reasonable period of time.
- (e) Minority. A person who is a citizen and a lawful permanent resident of the United States and who is:
 - (1) African American
 - (2) Hispanic American
 - (3) Asian-Pacific American
 - (4) Native American/Native Hawaiian

- (5) Members of other groups or other individuals found to be economically and socially disadvantaged under the Small Business Act, as amended.
- (f) Workforce Investment Board (WIB). A private or public agency devoted to assisting the recruitment and placement of disadvantaged persons or businesses.
- (g) Workforce. The number and demographics of the labor force living within the District's service area.

5-3.103 APPLICATION OF POLICY

When required to establish or maintain eligibility for federal funds, the District shall to the extent feasible:

- (a) Encourage Consultants to use the Services of the WIB or similar agencies to recruit disadvantaged persons and businesses.
- (b) Assure qualified and certified disadvantaged business enterprises are afforded maximum practicable opportunities to compete for procurement and construction awards consistent with the financial constraints of the District and with the rights of non-minority firms to compete equally for District awards.
- (c) Set a goal of 10 percent of the dollar value of Contracts executed during a fiscal year for the participation of DBEs either as prime Contractors or as subcontractors, as follows: at least 3.5 percent shall be allocated for minority-owned businesses, 3.5 percent for certified women-owned businesses, and 3 percent for disabled businesses where applicable.
- (d) Require competitors for District awards who claim DBE status to be CalTrans certified at the time of submitting bids or qualifications for Contract award. Qualification for DBE status by the District shall recognize the differing job-market availabilities in each of the occupational categories due to differing working category propensities of different ethnic groups and genders.

- (e) The District shall keep on file reports, records and affirmative action plans sufficient to ascertain compliance with this policy and with the requirements of federal law. The District shall submit such reports to the appropriate state or federal agency as required by law.

LIST OF CHANGES TO PART 5, CHAPTER 3. ECONOMIC OUTREACH

CHAPTER 4. DISPOSAL OF SURPLUS PROPERTY

5-4.101 POLICY

- (a) Definitions. The following terms shall apply to this policy:
- (1) District Property. Property to which title is vested in the District, regardless of the types of funds used to purchase the property and whether it was obtained by gift or transfer from another entity.
 - (2) Personal Property. Any movable item subject to ownership, including but not limited to materials, supplies, equipment, tools, and apparatus.
 - (3) Real Property. Land, and generally whatever is erected or growing upon or affixed to land, including structures that cannot be removed from the land.
 - (4) Surplus Property. All District owned property that is no longer needed or useable for District purposes.
 - (5) De Minimis Value. Surplus personal property is considered de minimis when its fair value is below the cost required for handling, record keeping, storage removal, and other costs associated with its trade or sale.
 - (6) No Value. Any surplus personal property that has minimal value due to spoilage, obsolescence or other cause or where the cost of disposal of such property would exceed the recovery value. Property has no value when it has reached the end of its useful life, or is otherwise deemed to be broken, unserviceable, junk, scrap or no longer suitable for its original purpose.
 - (7) Fair Value. The price at which a willing buyer and a willing seller settle a sale of property. Recent transactions or advertisements can be used as an estimate to establish fair value.

- (8) Useful Life. The life expectancy during which property is estimated to be in service before it wears out, becomes obsolete or is no longer fit for its original purpose.
- (9) Take Away Program. A program by which the District offers excess property to the general public at no cost, on the sole condition that the acquirer provide for its physical removal. Excess property offered in a take-away program must have no resale value and shall typically consist of furniture, low-value and/or damaged supplies and other miscellaneous items. The disposition of excess property through a take-away program must be more cost-effective than the cost of other forms of disposition.
- (10) Computer Asset. All computers, parts and equipment appurtenant thereto, including but not limited to desktop computers, laptops, servers, software, printers, fax machines and copiers.
- (11) Non-Profit Organization. An organization exempt from taxation under the provisions of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

5-4.102 PROCEDURE FOR DISPOSAL OF SURPLUS PROPERTY¹

Whenever the District has real or personal property no longer needed for District purposes, the General Manager may dispose of said property as follows:

- (a) Board approval is required for the disposal of single-item surplus good with a current market value greater than \$5,000.
- (b) Board approval is required for the disposal of any multiple-items (lot) of surplus Goods with a current market value greater than \$25,000.
- (c) Professional or Contract Services may be used for the disposal of surplus items, and a formal solicitation shall not be required for said Services. Fees for said Services shall be paid from respective surplus disposal proceeds.
- (d) Any surplus item(s) may be:

- (1) Sold for cash; or
 - (2) Used for trade or exchange
- (e) If after a reasonable effort to sell surplus personal property, such property remains unsold, it may be disposed of as follows:
- (1) By donation to a non-profit organization(s) or a public agency(s) located in the District's service area;
 - (2) By disposal to a certified recycler or refuse disposal company; or
 - (3) By disposal through a take-away program.
- (f) No Value Personal Property. When surplus personal property has no value, it may be disposed of as follows:
- (1) By sale for scrap or salvage value;
 - (2) By disposal to a certified recycler or refuse disposal company; or
 - (3) By disposal through a take-away program.
- (g) De Minimus Value Personal Property. When the estimated value of surplus personal property is *de minimis*, such property may be donated as follows:
- (1) To a non-profit organization(s);
 - (2) To a public agency(s) located in the District's service area.
- (h) Demolition/Deconstruction of District Facilities. The District recognizes that when contracts are let for the deconstruction or demolition of District facilities, there may be some undetermined surplus value in the deconstructed or demolished facility. In such circumstances, the requirements of sections (a) and (b) above are excused, but District contracts let for such deconstruction or demolition shall ensure the District receives the reasonable value of any salvageable materials recovered in the deconstruction or demolition.
- (i) Surplus Computer Assets.
- (1) Any surplus computer asset may be sold for cash or used for trade or exchange.

- (2) If after a reasonable effort to sell a computer asset, such property remains unsold, it may be disposed of in accordance with section B.5 of this provision.
- (3) If a computer asset has no value, it may be disposed of in accordance with section B.6 of this policy.
- (4) Computer assets that are of *de minimis* value may be disposed of in accordance with section B.7 of this policy.
- (5) Prior to disposal of any computer asset containing a hard drive, the custodial department must do one of the following:
 - (i) wipe the hard drive clean of all sensitive data;
 - (ii) remove and destroy the hard drive; or
 - (iii) send the equipment to a certified e-waste recycler who will shred or destroy the hard drive.
- (j) Board approval is required to declare any and all real property as surplus and/or to sell any and all surplus real property, as provided for under California law (i.e. Government Code section 54221, et seq.).
- (k) Board approval is required to authorize the General Manager to negotiate any and all sale prices and terms for the sale of surplus real property.
- (l) All net proceeds received from surplus activities shall be deposited into the District's designated funds.

LIST OF CHANGES TO PART 5, CHAPTER 4. DISPOSAL OF SURPLUS PROPERTY

¹ Section 5-4.102 amended by Resolution 9-16-1049 on September 30, 2016.

CHAPTER 5. ACQUISITION OF REAL PROPERTY INTERESTS

5-5.101 POLICY

- (a) The Board of Directors shall approve the acquisition of real property interests and authorize acceptances of conveyances for recordation. The General Manager shall execute certificates of acceptance of conveyances and cause conveyances to be recorded.
- (b) Notwithstanding the foregoing, the General Manager may approve the acquisition of real property interest and authorize acceptances of conveyances for record and record conveys if the acquisition is at no cost and necessary for construction or operation of District facilities. Acquisitions approved by the General Manager shall be reported to the Board.
- (c) Real property interests may also be acquired by the District pursuant to the Eminent Domain Law.

LIST OF CHANGES TO PART 5, CHAPTER 5. ACQUISITION OF REAL PROPERTY INTERESTS